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trary, is an unlawful and dangerous act, prohibited and made unlawful by express ordinance."

It may be suggested, in explanation of the court's opinion in this case, that shooting in the streets of a city is prohibited by statute (Va. Code, sec. 3361) and is on that account unlawful, and actionable therefore under the generally accepted rule as to breach of a statute; also under section 2900 of the Code. The answer is that the unlawful character of the act is referred by the court expressly to the ordinance which was both pleaded and put in evidence, and not to the statute, which, it would seem, was in no way adverted to.

It is true the decision of the court is made to rest not alone on the violation of the ordinance, it being held that D and H were trespassers and therefore engaged in an unlawful act independently of the ordinance; it is also true that the precise question now under examination as to the effect of the breach of the ordinance was not raised by the instructions of the lower court, and, so far as appears, was not argued by counsel in the court above, and the opinion of the court touching the question can hardly be termed a well-considered one; but the effect of the decision, I respectfully submit, is to place Virginia with those States which hold the violation of a penal city ordinance to be actionable *per se* for proximate injury.

O. D. BATCHELOR.

Newport News, Va.

WIFE'S CONTRACTUAL POWERS.

Editor Virginia Law Register:

Permit me to call the attention of the profession to a case decided in the Law and Equity court of this city during the past term, in which the question of a wife's contractual powers was at issue—a question which is, perhaps, open to the attention of all lawyers, and one in which the REGISTER has shown much interest.

The facts of the case, briefly stated, are as follows: My client, the plaintiff, brought an action of debt against a husband and wife on a negotiable note for \$500, of which the wife was the maker and the husband the indorser, the note bearing date in 1894. The husband was totally insolvent. The wife had no appreciable statutory separate estate, but owned considerable equitable separate estate.

The declaration was an ordinary declaration in debt, alleging that the wife was possessed of "separate estate" at the time the note was made, and was demurred to on two grounds: first, that it omitted to allege that the wife was possessed of statutory separate estate; and, second, that as the wife did not own such estate, this suit could not be maintained at law.

The case was obstinately fought, and briefs being filed by counsel on both sides, the mature opinion of the court is worthy of consideration.

On the first point it was argued that *Duval v. Chelf*, 92 Va., had no bearing, inasmuch as it was a decision under the "Smith Act," and not under the Code 1887; that under the "Smith Act" a wife could contract only to the amount of her separate estate, while under the Code of 1887 she can contract to any amount. On this point it was further argued that sec. 3245 provides that allegations which are not traversable need not be alleged, and inasmuch as the wife could not deny the ownership of separate estate, this allegation is not traversable and need not be alleged. And the court so held.

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The second point was principally relied on by the defendants, and may be embodied as follows: Can a married woman be sued *at law* on a contract made since the adoption of the Code of 1887, being, at the time of making said contract, possessed only of equitable separate estate?

Counsel for defendants relied at great length upon those views held by many members of the bar, and espoused so earnestly in several articles in the REGISTER by that able lawyer, Mr. Martin P. Burks. Counsel for plaintiff, on the other hand, conformed his argument to the lines of reasoning repeatedly set out by the editor of the REGISTER, and particularly to the learned article which appeared in the November number for 1898.

The following principal points were thus brought under the consideration of the court, and were passed upon as follows:

(1) Ownership of statutory separate estate is not an essential pre-requisite to enable a married woman to make contracts binding upon her personally. She has, in addition to her separate estate, the other sources of credit as set forth in section 2288, Code 1887.

(2) Code, section 2294, provides that equitable separate estates "shall not be deemed to be within the operation of the said sections" (the sections preceding section 2294 in this chapter). This provision can only mean that those rules of equity governing equitable separate estates still exist, except so far as altered by the preceding sections. And further, section 2294 provides that equitable separate estates "shall be subject to and governed by the rules and principles of equity applicable to such estates." This, too, can only mean that those rules of equity still exist which are not altered by statute.

The court held the case to be within the jurisdiction of a court of law, and entered a *personal judgment* against the wife.

It may also be of interest to the REGISTER to know that the court stated in terms its approval and adoption of the views taken by the editor in the November number for 1898.

Richmond, Va.

HUNSDON CARY.

JUDGMENT AS A LIEN ON A LAPSED DEVISE.

Editor Virginia Law Register:

Quite an interesting question recently came to the attention of the Circuit Court of Augusta county, in the case of *H. C. Palmer's Trustee v. George Stuart's Infants*. The question seems never to have been passed upon by our Court of Appeals, or, in fact, by any court of last resort, so far as counsel in that case have been able to find.

The facts in the case, as they developed during the progress of the case, are as follows:

On August 15, 1887, one Mrs. C. A. Johnson, a resident of Augusta county, departed this life, having first made and published her last will and testament, under one clause of which the testatrix devises a tract of land to one George Stuart, an ex-slave of hers. In the year 1884, H. C. Palmer recovered a judgment against George Stuart, which was duly docketed in the proper office. On July 27, 1887, just eighteen days before the death of the testatrix, George Stuart,